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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Thomas P. Luchino et al.

Confirmation No.: 2425

Serial No.: 09/863,773

Art Unit: 1744

Filed: May 23, 2001

Examiner: Laura C. Cole

For: A TOOTHBRUSH WITH INDIVIDUALLY EMBEDDED BRISTLES

Certificate of Mailing or Transmission [37 CFR 1.8(s)]

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OFFICE OF PETITIONSMail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450PETITION FOR REVIVAL OF AN APPLICATION FOR
PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

Note: A grantable petition requires the following items:

1. Petition fee;
2. Reply and/or Issue fee;
3. Terminal disclaimer with disclaimer fee—required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
4. Statement that the entire delay was unintentional.

1. Petition fee

- ☐ Small entity fee \$_____ (37 CFR 1.17(m)). Applicant claims small entity status.
See 37 CFR 1.27.
- ☒ Other than small entity fee \$1500.00(37 CFR 1.17(m))

2. Reply and/or fee

- A. The reply and/or fee to the above-noted Office Action in the form of Preliminary Amendment (identify type of reply):
- ☐ has been filed previously on
- ☒ is enclosed herewith.

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- B. The issue fee of \$
☐ has been paid previously on
☐ is enclosed herewith.
3. Terminal disclaimer with disclaimer fee
☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity disclaiming the required period of time is enclosed herewith (See PTO/SB/63).

STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE. The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))]

- ☒ Charge the petition fee of \$1500.00 to Account 10-0750/JDC375/JPB and for any additional fee required. A duplicate of this petition is attached.
- ☐ A check in the sum of \$_____ is attached.
- ☒ Charge Account 10-0750/JDC375/JPB for any additional fee required.

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Date: March 30, 2005

Enclosures: ☒ Fee Payment
☒ Reply
☐ Terminal Disclaimer Form
☐ Additional Sheets containing statements establishing unintentional delay
☐ Other: _____

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: Thomas P. Luchino et al. Attorney Docket No. JDC-375
Serial No.: 09/863,773 Art Unit: 1744
Filed : May 23, 2001 Examiner: Laura C. Cole
For : **A TOOTHBRUSH WITH INDIVIDUALLY EMBEDDED BRISTLES**

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James P. Barr

(Name of applicant, assignee, or Registered Representative)

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PRELIMINARY AMENDMENT

Dear Sir:

In response to the Office Action mailed June 4, 2003 ("the Office Action"), Applicants request reconsideration in light of the following amendment and remarks.

Amendments to the Claims are reflected in the listing of claims, which begins on page 2 of this paper.

Remarks/Arguments begin on page 8 of this paper.

This listing of claims will replace all prior versions and listings of claims in the application:

Listing of Claims

Claim 1 (currently amended) A toothbrush comprising:

a handle;

a toothbrush head distal to the handle; and

a multiplicity of bristles, each of said bristles having a diameter ranging from about 0.25 mm to about 0.60 mm and being individually embedded in said toothbrush head; said bristles being mutually spaced apart from one another by a distance ranging from about 0.5 times to about 10 times the diameter of the bristles; ~~said bristles further being grouped together in sections according to said diameter range, wherein each of said groups of bristles have varying diameters~~ said toothbrush further including at least one dense tuft of bristles.

Claim 2 (currently amended). A toothbrush according to Claim 1 ~~further comprising~~ wherein said at least one dense tuft of bristles is distal to the handle.

Claim 3 (previously amended). A toothbrush according to Claim 1 wherein:

the bristles comprise at least one group of bristles having a diameter from about 0.35 mm to about 0.60 mm and at least one group of bristles having a diameter of from about 0.25 mm to about 0.34 mm.

Claim 4 (withdrawn). A toothbrush according to Claim 3 wherein the toothbrush head further comprises sections wherein:

the bristles are arranged such that at least one section of the toothbrush head contains bristles having diameters from about 0.35 mm to about 0.60 mm, while at least one section of the toothbrush head contains first type bristles having diameters ranging from about 0.25 mm to about 0.35 mm.

Claim 5 (withdrawn). A toothbrush comprising:

a handle;

a toothbrush head distal to the handle;

at least one individually embedded second type bristle having a diameter of from about 0.08 mm to about 0.35 mm and a free length of from about 7 mm to about 16 mm; and

at least one third type bristle having a diameter of from about 0.15 mm to about 0.40 mm and a free length of from about 5 mm to about 14 mm; wherein the trim difference between the second type bristle and the third type bristle ranges from about 0.5 mm to about 3 mm.

Claim 6 (withdrawn). A toothbrush according to Claim 5 further comprising at least one section wherein:

the free lengths of the bristles within at least one section of the toothbrush head are varied such as to create a sawtooth cut profile.

Claim 7 (withdrawn). A toothbrush according to Claim 5 further comprising at least one section wherein:

the free lengths of the bristles within at least one section of the toothbrush head are varied such as to create a wave cut profile.

Claim 8 (withdrawn). A toothbrush according to Claim 5 further comprising at least one section wherein:

The free lengths of the bristles within at least one section of the toothbrush head are varied such as to create an arc cut profile.

Claim 9 (withdrawn). A toothbrush according to Claim 5 further comprising first sections and second sections wherein:

the first sections comprise second type bristles and the second sections comprise third type bristles and each of the first and second sections comprises from 1 to 7 rows of bristles.

Claim 10 (withdrawn). The toothbrush according to Claim 9 wherein:

the first sections are alternately spaced with the second sections.

Claim 11 (withdrawn). A toothbrush according to Claim 5 wherein:

the second and third type bristles are arranged to create an alternating wave pattern.

Claim 12 (withdrawn). A toothbrush according to Claim 5 wherein:

the second and third type bristles are arranged to create a pattern of a circle of second type bristles surrounding the third type bristles along a row.

Claim 13 (withdrawn). A toothbrush according to Claim 5 wherein:

the second and third type bristles are arranged to create a pattern of a hexagon of second type bristles surrounding a third type bristle.

Claim 14 (withdrawn). A toothbrush according to Claim 5 further comprising:

at least one fourth type bristle having a diameter of from about 0.15 mm to about 1.0 mm and a free length of from about 9 mm to about 15 mm arranged about the periphery of the toothbrush head.

Claim 15 (withdrawn). A toothbrush according to Claim 14 wherein:

the toothbrush contains a plurality of fourth type bristles arranged along the periphery of the toothbrush head; and

the height of the fourth type bristles alternates along the periphery of the toothbrush head to create an arc shaped form.

Claim 16 (withdrawn). A toothbrush according to Claim 14 wherein:

the toothbrush contains a plurality of fourth type bristles arranged along the periphery of the toothbrush head; and

the height of the fourth type bristles alternates along the periphery of the toothbrush head to create a sawtooth shaped form.

Claim 17 (withdrawn). A toothbrush according to Claim 14 wherein:

the toothbrush contains a plurality of fourth type bristles arranged along the periphery of the toothbrush head; and

the height of the fourth type bristles alternates along the periphery of the toothbrush head to create a wave shaped form.

Claim 18 (withdrawn). A toothbrush according to Claim 5 wherein:

the toothbrush contains a multiplicity of bristle diameters within the toothbrush head.

Claim 19 (withdrawn). A toothbrush according to Claim 5 wherein:

the toothbrush contains a multiplicity of bristle spacing within the toothbrush head.

Claim 20 (withdrawn). A toothbrush according to Claim 5 further comprising:

at least one dense tuft of bristles.

Claim 21 (withdrawn). A toothbrush comprising:

a handle;

a toothbrush head distal to the handle, the toothbrush head comprising a periphery and a distal end; and

bristles which are individually embedded in the toothbrush head and mutually spaced apart from one another by a distance from about 0.5 times to about 10 times the diameter of the bristles;

wherein the bristles comprise second type bristles having a diameter of from about 0.08 mm to about 0.35 mm and a free length of from about 7 mm to about 16 mm; third type bristles having a diameter of from about 0.15 mm to about 0.40 mm and a free length of from about 5 mm to 14 mm; fourth type bristles having a diameter of from about 0.15 mm to about 1.0 mm and a free length of from about 9 mm to about 15 mm arranged along the periphery of the toothbrush head; and a dense tuft of bristles at the distal end.

Claim 22 (previously amended). A toothbrush comprising:

a handle;

a toothbrush head distal to the handle;

a multiplicity of bristles, each of said bristles having a diameter ranging from about 0.25 mm to about 0.60 mm and being individually embedded in said toothbrush head; said bristles being mutually spaced apart from one another by a distance ranging from about 0.5 times to about 10 times the diameter of the bristles; said bristles further being grouped together according to said diameter range, wherein each of said groups of bristles have varying diameters; and at least one dense tuft of bristles.

Claim 23. (previously amended) A toothbrush according to Claim 22 wherein:

the bristles comprise at least one group of bristles having a diameter from about 0.35 mm to about 0.60 mm and at least one group of bristles having a diameter of from about 0.25 mm to about 0.34 mm.

Claim 24. (original) A toothbrush according to claim 22 wherein the dense tuft of bristles has a shape selected from the group consisting of circle, square, oval, triangle, elongated rectangle, polygonal, half-moon, horseshoe, bar, stars, arc and combinations thereof.

Claim 25. (original) The toothbrush according to Claim 24 further comprising a distal dense tuft of bristles.

Remarks/Arguments

This is a full and timely response to the Official Action mailed June 4, 2003. A Petition to extend the time for response for one (1) month, i.e., from September 4, 2003 to October 4, 2003 inclusive, is being submitted simultaneously herewith. Reexamination and reconsideration of this application in light of the forgoing amendments and the following remarks are respectfully requested.

Claims 1 and 2 have been amended. Support for this amendment is found in the specification on page 13, lines 15 to 16. Non-elected claims 4-21 have previously been withdrawn. Thus, claims 1-3 and 22-25 are currently pending for the Examiner's consideration.

Claim Objections

In the Office Action, the Examiner objected to claims 1-3 and 22-25 because of various informalities. These informalities have been corrected by the present amendment. No new matter has been added.

Claims 1- 3 and 22-25 are objected to because of the following informalities; Claim 1, "said groups" lacks proper antecedent basis. Applicants have deleted this terminology from claim 1.

Rejections Under 35 U.S.C. 103(a)

Claims 1 and 3 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Weihrauch U.S. Patent 5,974,619 in view of U.S. Patent 4,963,046 to Eguchi. Applicants respectfully traverse.

Applicants have amended claim 1 in the present invention to incorporate the limitations of claim 2, thus requiring the toothbrush to further include at least one dense tuft of bristles. As tacitly acknowledged by the Patent Office, this expedient is not disclosed or fairly suggested by the above cited references.

Rejections Under 35 U.S.C. 103

Claims 2 and 22-25 have been rejected under 35 U.S.C. 103(a) as obvious over Weihrauch U.S. Patent 5,974,619 in view of U.S. Patent 4,963,046 to Eguchi as above and further in view of Berger U.S. Patent 5,835,033. Applicants respectfully traverse.

It is respectfully submitted that the Berger reference does not disclose as much as

the Patent Office alleges. It is the position of the Patent Office that Berger discloses a toothbrush having both individually embedded bristles in combination with at least one dense tuft of bristles. Applicants respectfully disagree.

The Berger reference teaches a toothbrush especially for the combined brushing of teeth and massaging of gums. The toothbrush is formed according to a process described in column 5, lines 1 to 28 and as illustrated in Figures 2 and 3. As shown in these Figures, groups of bristles (or tufts) are formed in the toothbrush head in rows. These groups of bristles are then subjected to heat treatment for the procurement of rounded free end portions. Accordingly, the entire toothbrush is formed by groups of bristles, not by any individually embedded bristles that are spaced apart from one another. The mere fact that the bristle groups are later subjected to a heat treatment to form rounded ends does not result in a toothbrush having individually embedded bristles in combination with a tuft of bristles are presently required by the claimed invention. If it is the position of the patent Office that the heat treatment forms a single bristle, it is respectfully submitted that the thus formed single bristle would not have a diameter within the range of 0.25mm to 0.60mm as required by the pending claims. Accordingly, the present combination of references does not disclose all of the elements of the present invention and the present rejection should be withdrawn.

Claims 2 and 22-25 have been rejected under 35 U.S.C. 103(a) as obvious over Weihrauch U.S. Patent 5,974,619 in view of U.S. Patent 4,963,046 to Eguchi as above and further in view of Thompson U.S. Patent 301,644. Applicants respectfully traverse.

Thompson discloses a brush for brushing teeth having a plurality of bristles arranged on a head portion of the brush and further includes rubber tongues fixed to the perimeter of the brush head. The rubber tongues were meant to prevent the interior bristles from bending outward, which renders the toothbrush unpleasant to use. (Col. 1, lines 11-24) As is apparent from this reference which dates back to 1884, one of ordinary skill in the art recognizes that bristles and rubber tongues are distinct and a rubber tongue cannot be considered to be a bristle. Nevertheless, the Office Action appears to allege that Thompson discloses a toothbrush having both tufts of bristles and individually embedded bristles. This position is completely unsupported by the cited reference and the acknowledged distinction in the art between a bristle and a rubber tongue. Should the Patent Office persist with the present rejection, Applicants respectfully request support for its position that a rubber tongue has ever been considered by a person skilled in the art as being a bristle. In the absence of

such support, the present rejection should be withdrawn. In addition to the foregoing, even assuming arguendo that a rubber tongue can be considered to be a bristle, the Thompson reference fails to disclose or suggest the appropriate diameter and spacing for these elements. Neither of the cited references teaches or suggests the use of rubber tongues in their toothbrush designs so there is no direction given to a person skilled in the art to appropriately form a rubber tongue with a diameter within the claimed range and to space the rubber tongues apart from one another within the claimed range. Accordingly, the combination of these references does not destroy the patentability of the present claimed invention.

Claims 2 and 22-25 have been rejected under 35 U.S.C. 103(a) as obvious over Weihrauch U.S. Patent 5,974,619 in view of U.S. Patent 4,963,046 to Eguchi as above and further in view of Libby U.S. Patent 1,251,250. Applicants respectfully traverse.

The Office Action acknowledges that Libby does not disclose a specific diameter for the first type of individually embedded bristles. In addition, the rubber elements disclosed in Libby are not embedded into the toothbrush, rather, as disclosed in column 2, lines 8 to 101, are cemented to the toothbrush. Clearly the cementing of rubber elements onto the toothbrushes in the Weihrauch or Eguchi references does not result in the present claimed invention. Accordingly, Libby in view of Weihrauch and Eguchi does not disclose, teach or suggest a toothbrush of the present invention. Withdrawal of this rejection is respectfully requested.

Conclusion

In view of the foregoing reasons, it is believed that the present application as amended herewith is in condition for allowance. Accordingly, favorable reconsideration of the amended claims in light of the above remarks and the issuance of a Notice of Allowance are respectfully solicited. If the Examiner wishes to discuss the captioned application or this Amendment, the Examiner is requested to call the undersigned Attorney at the phone number given below.

If there are any fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 10-0750.

Respectfully submitted,

/James P. Barr/

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